

GENT DAVIS

IBLA 77-562

Decided August 21, 1978

Appeal from the decision of the California State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease CA 3689 which had terminated for failure to pay rental timely.

Affirmed.

1. Oil and Gas Leases: Reinstatement

While an oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated under 30 U.S.C. § 188(c) (1970) if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence, generally forgetfulness is not a justifiable excuse for delay in making the rental payment, and mailing the payment after the due date does not constitute reasonable diligence.

APPEARANCES: Gent Davis, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Gent Davis appeals from the August 26, 1977, decision of the California State Office, Bureau of Land Management (BLM), denying a petition for reinstatement of oil and gas lease CA 3689, which had terminated by operation of law for failure to pay the annual rental timely. The rental was due to be received on Friday, July 1, 1977; it was postmarked Tuesday, July 5, 1977; and it arrived in the BLM office Wednesday, July 6, 1977.

In his petition for reinstatement, and again on appeal, appellant stated that although he prepared his payment check for mailing well before the due date, he forgot to mail it until later, and as a result the check was in transit over the July 4 holiday. BLM in

its decision stated that the appellant had not mailed the rental payment sufficiently in advance of the due date to indicate the exercise of reasonable diligence. BLM also noted that appellant had not shown a justifiable excuse for failure to pay rental on time. We affirm.

[1] An oil and gas lease terminated for failure to pay annual rental on or before the anniversary date may be reinstated if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970). Reasonable diligence normally requires mailing the rental payment "sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment." 43 CFR 3108.2-1(c)(2). Here, mailing the rental payment after it is due does not constitute reasonable diligence. Apostolos Paliombeis, 30 IBLA 153 (1977). There is no showing that appellant's payment was placed in transit prior to the July 1 due date.

Nor has a justifiable excuse been established for the failure to pay rental timely. Simple forgetfulness is not a justifiable excuse. Jones K. Mullinax, 35 IBLA 73 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

I concur:

Joan B. Thompson
Administrative Judge

I concur in the result:

James L. Burski
Administrative Judge

